

OLC 74-1505

12 July 1974

MEMORANDUM FOR THE RECORD

SUBJECT: Public Law 93-350 (H.R. 9281), Annuity increase for law enforcement and firefighting personnel under Section 8336(c) of Civil Service Commission Act

1. Public Law 93-350, signed July 12, 1974, liberalizes the retirement program for law enforcement and firefighting personnel under Civil Service retirement.

2. The provisions of the law are as follows:

a. Increases computation formula to 2-1/2% for each of the first 20 years of such service and 2% thereafter. (Presently: computed at 2%, not to exceed 40 years.)

b. Provides mandatory retirement at age 55 (or older age until 20 years service rendered), unless the agency exempts the employee--no extension over 60. (Presently: mandatory retirement at 70.)

c. Increases employee deduction to 7-1/2%. (Presently: 7%.)

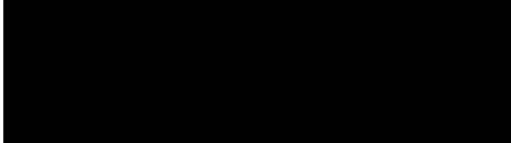
d. Includes premium pay for law enforcement officers in computing base pay. Presently, only the premium pay for persons who have to remain at their station, such as firefighters, can be added to base pay for retirement.

3. Applicability to CIA Retirement Act:

The present computation formula of 2% in the CIA Retirement system is in phase with the formula for law enforcement officers and the Foreign Service, except

the maximum under CIA and the Foreign Service is 35 years or 70%, rather than 80% under CSC. To adopt the liberalized computation formula in P. L. 93-350, one must carefully consider the reasons for the proposal. It is contended that law enforcement must be a "young man's service" in order to improve the quality, efficiency, and productivity of police work. The hazardous aspects of the positions are related specifically to the position rather than the concerns of the individual employee. The House and Senate Government Operations Committees noted that though the law enforcement retirement program was to be an incentive for early retirement to assure a young service, many stayed until the mandatory retirement age of 70. The Committees considered the maximum mandatory retirement age of 55 as the most effective way to assure a young man's service and the added benefits would make it more economical and practical for these employees to retire before the attainment of age 55.

A major objective of CIARDS was to provide for early retirement, though not necessarily to achieve a "young man's service." The mandatory retirement age is 60, though the Director in his discretion may retire a participant at age 50 with 20 years of service and any participant with 25 years. Participants in CIARDS are designated upon a determination that they support Agency activities abroad hazardous to life or health or that their duties are so specialized because of security requirements as to be clearly distinguishable from normal Government employment. Accordingly, if the rationale for increasing retirement benefits for law enforcement officers to achieve a younger service is applied to CIARDS, the mandatory retirement age should be dropped from age 60 to age 55, and the criteria for qualification changed to apply only to those positions where a "young man's service" is necessary to carry out the demands of the job.


Assistant Legislative Counsel

STATINTL

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	1 - PLC Chrono	1 - Finance	

izing appropriations for amounts due after June 30, 1974. The Postal Service concurs with this interpretation. I ask that a letter I have received from the Postal Service, dated June 25, 1974, confirming this interpretation, be inserted at the end of my remarks.

Upon passage of H.R. 29 by the House on May 17, 1973, it was estimated that the amount for which the Postal Service should be obligated as of June 30, 1974, was \$284,667,000. This amount represented retirement amortization payments, including interest, attributable to pay increases granted postal employees prior to July 1, 1973.

While the Senate report on H.R. 29 uses such figure, it fails to take into account an additional \$69,200,000 due on June 30, 1974, as the initial payment due as a result of an additional pay increase granted after July 1, 1973—in fiscal year 1974. Thus, the total amount due the fund, attributable to all intervening pay increases, is \$353,867,000 as of June 30, 1974.

The Postal Service Appropriation Act for fiscal year 1974 directed that \$142,333,500, representing one-half of the previously estimated obligation, be transferred to the retirement fund. It was contemplated that the remaining balance would be covered in the fiscal year 1975 appropriation bill. Such funds have not yet been transferred by the Postal Service and, upon enactment of H.R. 29, the requirement to make the transfer will be cancelled.

Recap (in millions)

Amount due June 30, 1974, for pre-FY 1974 actions.....	\$284,667,000
Amount due June 30, 1974, for FY 1974 actions.....	69,200,000
Amount due June 30, 1974 (arrears)	353,867,000
Amount due in FY 1975.....	202,885,000
Total	556,752,000

The letter follows:

LAW DEPARTMENT,
Washington, D.C., June 25, 1974.

HON. THADDEUS J. DULSKI,
Chairman, Committee on Post Office and Civil Service, House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: I understand that some question has arisen in respect to H.R. 29, a bill relating to payments on unfunded liability by the U.S. Postal Service to the Civil Service Retirement Fund, as it passed the Senate. The question has to do with whether section 1 of the bill, which would amend 5 U.S.C. § 8341 by adding a new subsection (h), could be construed or interpreted as authorizing future appropriations to the Postal Service in respect to the obligations of the Postal Service which would be created by the new subsection (h). That is, the question runs to whether the Postal Service might at some future time request appropriations under that subsection to enable it to make payments of all or any part of the thirty equal annual installments (with interest) envisioned by subsection (h) (2).

The Postal Service has no intention of ever making such a request and could not properly do so. In our opinion, it is entirely clear that the provisions in question would not authorize any appropriation to the Postal Service. Similarly, we see no reasonable way to interpret section 2 of the bill (which would amend 39 U.S.C. § 1005(d)) as conceivably authorizing such a request.

acted in the form in which it passed the Senate, the Postal Service would be obliged to assume the responsibility for the remaining 27 installments on the liability created by the postal pay increases instituted in July, 1971, by the Postal Service and for all 30 installments on the liabilities arising out of all other pay increases that have been or may be instituted by the Postal Service under the Postal Reorganization Act. The only language in H.R. 29 which could be reasonably interpreted as contemplating authorization of appropriations is to be found in section 3 of the bill, regarding the payments for fiscal years 1972 through 1974 attributable to pay increases created by the Postal Service prior to July 1, 1973.

Sincerely,

LOUIS A. COX,
General Counsel.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

RETIREMENT OF CERTAIN LAW ENFORCEMENT AND FIREFIGHTER PERSONNEL

Mr. DULSKI. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 9281) to amend title 5, United States Code, with respect to the retirement of certain law enforcement and firefighter personnel, and for other purposes, with Senate amendments thereto, and concur in the Senate amendments.

The Clerk read the title of the bill.

The Clerk read the Senate amendments, as follows:

Page 2, line 5, strike out "sections" and insert "section".

Page 2, strike out line 21 and insert "amended—

"(1) by striking out 'and' at the end of paragraph (18);

"(2) by striking out the period at the end of paragraph (19) and inserting in lieu thereof a semicolon and the word 'and'; and

"(3) by adding at the end thereof the following:"

Page 4, line 2, strike out "rehabilitation." and insert "rehabilitation; and".

Page 4, in the eighth line following line 16, strike out "1973" and insert "1974".

Page 4, in the ninth line following line 16, strike out "1973" and insert "1974".

Page 5, line 2, strike out "fifty-five" and insert "55".

Page 5, line 3, strike out "twenty" and insert "20".

Page 5, line 7, strike out "sixty" and insert "60".

Page 5, line 9, strike out "sixty" and insert "60".

Page 5, line 12, strike out "sixty-day" and insert "60-day".

Page 5, line 16, strike out "fifty" and insert "50".

Page 5, line 18, strike out "twenty" and insert "20".

Page 5, line 4, strike out "per centum" and insert "percent".

Page 5, line 25, strike out "twenty" and insert "20".

Page 6, line 1, strike out "per centum" and insert "percent".

Page 6, line 2, strike out "twenty" and insert "20".

Page 6, line 9, strike out "1973" and insert "1974".

Page 6, line 10, strike out "1977" and insert "1974".

The SPEAKER. Is there objection to the request of the gentleman from New York?

There was no objection.

(Mr. DULSKI asked and was given permission to revise and extend his remarks.)

Mr. DULSKI. Mr. Speaker, the substantive differences between the provisions of H.R. 9281 as passed by the House and the Senate amendments thereto relate only to the effective dates of certain provisions of the bill.

Under the House-passed bill, the inclusion of premium pay for uncontrollable overtime as a part of basic pay and the 7½ percent retirement deduction rate for employees covered under the bill would take effect at the beginning of the first pay period after December 31, 1973. Under the Senate amendment the two provisions would take effect the first pay period after December 31, 1974.

The mandatory retirement provision would take effect on January 1, 1977, under the House bill and on January 1, 1978, under the Senate amendment.

The Senate amendments are necessary and proper in view of the 9-month time differential between passage of H.R. 9281 by the House—September 20, 1973—and passage by the Senate—June 24, 1974.

All of the other Senate amendments are purely technical changes in order to conform the language of the bill to the style of title 5 of the United States Code.

The Senate amendments were concurred in.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. DICKINSON. Mr. Speaker, I would like to make a personal statement. On roll call No. 319, the vote on final passage on H.R. 15472, the agriculture-environmental and consumer protection appropriations bill, fiscal year 1975, the RECORD shows I am recorded as not voting. Mr. Speaker, I was here and I voted "yea."

PERSONAL EXPLANATION

Mr. PREYER. Mr. Speaker, I was in High Point, N.C., at noon yesterday keeping an important, and long standing, speaking engagement. I had arranged to be back in Washington the same afternoon—in time for important votes. Of course, the House met early and I was not present to vote on the motion of the gentleman from Louisiana (Mr. WAGGONER), instructing the conferees on H.R. 69 to support the House language on busing. Had I been here, I would have voted for the Waggoner motion. I support the House language and will continue to do so.

CONFERENCE REPORT ON S. 3458, DOMESTIC ASSISTANCE PROGRAMS

Mr. POAGE. Mr. Speaker, I ask unanimous consent for the immediate consideration of the conference report on the Senate bill (S. 3458) to amend the Agricultural Conservation Act of